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(2015) 06 BOM CK 0118

In the Bombay High Court

Case No : Writ Petition No. 1791 of 2015

Prashant Tulshidas Kate and Others APPELLANT

Vs

Regional Joint Registrar (Sugar), Pune Division and Others RESPONDENT

Date of Decision : 08-06-2015

Acts Referred:
Maharashtra Co-operative Societies Act, 1960 — Section 152, 83, 88

Citation : (2015) 06 BOM CK 0118

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : A.A. Kumbhkoni, Senior Advocate and A.P. Kulkarni, for the Appellant; S.D. Rayrikar, A.G.P., Advocates for the Respondent

Final Decision : Disposed off

Judgement

R.M. Savant, J.—Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against two orders both dated 24.12.2013 passed by the Appellate Authority/Revisionary Authority i.e. Hon''ble Minister for Co-operation, Government of Maharashtra by which orders the Appeal No. 249 of 2013 filed against the order dated 18.02.2013 invoking Section 88 of the Maharashtra Cooperative Societies Act came to be dismissed and by the second order the Revision Application being No. 304 of 2012 against the report/order dated 29.01.2013 passed by the Divisional Joint Registrar, Pune under Section 83 of the said Act came to be dismissed.

3. It is not necessary to burden this order with unnecessary details looking to the final directions that are required to be issued. Suffice it would be to state that an inquiry under Section 83 of the said Act came to be initiated pursuant to a report submitted by the Special Auditor, in which report the Special Auditor had reported against the loss caused to the Respondent No. 3 Sakhar Karkhana in respect of the sale of sugar bags between the period January 2010 to December

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2010. There is some dispute as to whether the report submitted by the Special Auditor was pursuant to the complaint made by one of the members of the Respondent No. 3 society namely one Shri. Bagal or was a suo-moto action taken by the Registrar. It is not necessary to go into the said aspect for the purposes of the present Petition. In so far as the report under Section 83 is concerned, the fact that the Respondent No. 3 has suffered a loss to the tune of Rs. 6,92,93,110/- has been recorded by the Special Auditor in the concluding part of the said report. The inquiry officer has absolved three Directors whose names find a place in the said concluding part and has reported that the rest of the Directors are responsible for the loss and has referred to the said Directors by name in the said concluding part. It is pursuant to the said inquiry report submitted under Section 83 of the said Act that the proceedings under Section 88 of the said Act to fix the liability of the persons responsible for the loss came to be initiated. It seems that the said proceedings were commenced by issuance of show-cause notice to the Petitioners who are the Directors excluding three who have been absolved of any blame. The issuance of the said show-cause notice under Section 88 resulted in the Petitioners challenging the report submitted under Section 83 by the Divisional Joint Registrar by filing an Appeal under Section 152 before the State Government. The Petitioners in the Appeal have founded their case on the fact that the liability for any loss cannot be placed at their door as the loss according to the Petitioners was caused on account of business reasons as it is not the case of the authorities exercising powers under the said Act that the auction of the said sugar bags was carried out in any manner detrimental to the interest of the Respondent No. 3 Sakhar Karkhana. Hence, the sum and substance of the case of the Petitioners is that they are not responsible for the alleged loss caused to the Respondent No. 3 Sakhar Karkhana and therefore they could not be subjected to proceedings under Section 88 of the said Act. In so far as the initiation of the proceedings under Section 88 is concerned, the same were also questioned on the self same ground. It appears that in the said proceedings, initially a stay was granted from proceeding further. However, by the impugned order the said stay has been vacated and therefore, there is now no impediment to proceed against the Petitioners under Section 88 of the said Act. Both the Appeal and the Revision Application though filed against different orders were disposed of by the Appellate Authority which is also the Revisionary Authority i.e. Hon''ble Minister for Co-operation on the ground that the defences which the Petitioners seek to now raise against the findings recorded in the report under Section 83 can be availed of by them in the proceedings under Section 88 and it is not necessary therefore for the Appellate/Revisionary Authority to go into the said aspects. As indicated above both the Appeal filed against the report under Section 83 and the Revision Application filed against the initiation of the proceedings under Section 88 came to be dismissed by the Appellate/Revisionary Authority. It is the said two orders both dated 24.12.2013 which are taken exception to by way of the above Petition.

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4. The Learned Senior Counsel Shri. A.A. Kumbhkoni appearing on behalf of the Petitioners was at pains to demonstrate to this Court as to how the Petitioners cannot be held liable for any loss that is caused to the Respondent No. 3 Sakhar Karkhana. The Learned Counsel would contend that it is not the case of the authorities in exercising powers under the Maharashtra Co-operative Societies Act that the sale of the said sugar bags was carried out in a malafide manner as to cause wrongful gain to the Petitioners and wrongful loss to the Respondent No. 3 Sakhar Karkhana. The Learned Senior Counsel would reiterate the ground made out in the Appeal and the Revision that the loss if any was a business loss which took place in view of the circumstances which were beyond the control of the management of the Respondent No. 3 Sakhar Karkhana. The Learned Senior Counsel took exception to the observations made by the Appellate Authority in the concluding part of its order, wherein the Appellate Authority according to the Learned Senior Counsel has unnecessarily referred to the names of the Directors when it would have concluded by recording a prima-facie view.

5. Per contra, The Learned Counsel appearing on behalf of the Respondent Nos. 5 and 6 Mr. S.S. Patwardhan would contend that having regard to the nature of the order that is passed and also having regard to the mandate of Section 88 of the said Act, the order passed by the Appellate/Revisionary Authority cannot be taken exception to. The Learned Counsel would contend that since the aspect of whether there is any misfeasance on the part of the Board of Directors of the Respondent No. 3 is open for inquiry under Section 88, it would therefore be open for the Petitioners to urge the contentions that they are seeking to urge in the above Petition before the authority trying the proceedings under Section 88. The Learned Counsel would therefore contend that this Court would therefore not exercise its Writ Jurisdiction in the instant case.

6. Having heard the Learned Counsel for the parties, I have considered the rival contentions. As indicated herein above, both the Appeal and the Revision Application have been disposed of by the Appellate/Revisionary Authority on the ground that the contentions which the Petitioners are seeking to raise in the Appeal and the Revision as regards their liability can be raised by the Petitioners in the inquiry under Section 88 and therefore, there was no warrant to interdict with the orders passed by the inquiry officer under Section 83.

7. In so far as Section 83 is concerned, the same postulates a suo-moto inquiry to be initiated by the Registrar or on a complaint received from 1/3 of the members. As indicated herein above, it is pursuant to a report submitted by a Special Auditor that the proceedings under Section 83 came to be initiated. There is some controversy as to whether the said inquiry was initiated on the receipt of a complaint from one of the members or suo-moto by the Registrar. Though the order passed under Section 83 is prefaced with a reference to the letter of the member, the said preface also contains a reference to the report of the Special Auditor and in the body of the said order a specific reference has been made to the report of the Special Auditor. In my view, it is therefore not necessary for this

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Court at the present stage to go into the said aspect, though a reference and reliance was placed on a judgment of a Learned Single Judge of this Court reported in Ashok Saha and Others Vs. The State of Maharashtra and Others, (2011) 3 ALLMR 805 : (2011) 4 BomCR 260 : (2011) 4 MhLj 432 in support of the contention that the inquiry could not have been initiated at the behest of a lone member and could be done so also if 1/3 members were to make a complaint to the Registrar. The said aspect can obviously be kept open as the same would require a deeper scrutiny may be at the stage where the findings under Section 88 would be under consideration. In so far as Section 88 is concerned, the proceedings initiated under the said provisions are a sequitur to the inquiry under Section 83 and the report submitted thereunder the power which is vested on the authority under Section 88 is to fix the liability after coming to a conclusion that there was malfeasance and misfeasance on the part of the management. The said proceedings though a sequitur to Section 83 are independent proceedings and obviously would have to be conducted by a different officer than the one who has submitted the report under Section 83 as otherwise it would result in breach of principles of natural justice as the officer who has submitted the report under Section 83 would sit in appeal whilst exercising powers under Section 88. However, the sine-qua-non before the liability can be fixed on a Director or the Directors is a conclusion that is to be reached by the authority that the charge of misfeasance or malfeasance is proved against the Director or Directors. Hence, it would always be open for the persons who are charged under Section 88 that the charges which are framed against them are not proved and that they are not liable for any loss that is caused to the concerned cooperative society. In the said context, the report under Section 83 recording a finding against the persons in charge of management of the co-operative societies can only be said to be prima-facie conclusion which has been reached by the inquiry officer in respect of the complicity or the liability of the persons in management. Hence, the scope of the inquiry under Section 88 is such that the persons who have been charged can obviously take all the defences which are available to them, in so far as their liability for the loss caused to the concerned co-operative society is concerned, in the instant case also the Petitioners would be entitled to take such defences as are available to them to contend that they cannot be made liable for the loss caused to the Respondent No. 3 Sakhar Karkhana. In my view, though the names of the Petitioners have been mentioned in the concluding part of the report under Section 83, the same can be attributed to the fact that the inquiry officer has come to a conclusion that three Directors were to be excluded and has therefore referred to the rest of the Directors by name and that by no stretch of imagination can not be said to be a finding which is conclusive in so far as the inquiry under Section 88 is concerned. In my view, therefore having regard to the observations made in the impugned orders both dated 24.12.2013, it is not necessary for this Court to interdict in its Writ Jurisdiction at this stage. In my view, the interest of justice would be served if the above Petition is disposed of by issuing the following directions:-

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I) The impugned orders both dated 24.12.2013 passed by the Appellate/ Revisionary Authority are not interfered with.

II) It would be open for the Petitioners to take such defences as are available to them in law as regards their case that they are not liable for the alleged loss of Rs. 6,92,93,110/- on account of the sale of sugar bags between period January 2010 to December 2010. The authority trying the proceedings under Section 88 would consider the said defences of the Petitioners uninfluenced by the observations made in the report/order passed under Section 83 of the said Act and would arrive at its independent conclusion.

III) The contentions of the parties are explicitly kept open for being urged in the proceedings under Section 88.

IV) The authority trying the proceedings under Section 88 to try the same on their own merits and in accordance with law uninfluenced by the impugned orders or the instant order including the issue of jurisdiction under Section 83, having regard to the judgment (supra) of a Learned Single Judge of this Court. With the aforesaid directions, the Writ Petition is disposed of.

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